HIGH COURT OF DELHI : NEW DELHI

W.P(C) 5044 OF 2002

Judgment reserved on: November 01, 2007
Judgment delivered on: November 30, 2007

Ex.Const.Raj Kumar ..... Petitioner
! Through: Mr. Arun Bhardwaj, Advocate.

versus

$ Lt. Governor & Ors ..... Respondents
^ Through: Mr.V. K. Tandon with Ms. Manpreet Kaur, Advocates.

***CORAM:**
HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J.

1. The petitioner challenges the order dated 6.8.2001 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short `the Tribunal') in O.A No.2745/1999 whereby the aforesaid OA filed by the petitioner has been dismissed by the Tribunal.

2. The petitioner was a Constable with the Delhi Police. Admittedly he remained unauthorisedly absent for thirteen days from 13.6.1994 to 23.6.1994 and reported for duty only on 24.6.1994. He was issued a memorandum for holding departmental enquiry against him for unauthorisedly absenting himself for a period of thirteen days, one hour and 20 minutes. It was further stated that *"The previous service record of Constable Raj Kumar No.1368/00 shows that he is a habitual absentee and has absented himself on 20 different occasions in the past. Numerous minor punishment awarded to him for these absence have no effect on him.*

3. The above act on your past amounts to gross negligence and carelessness in the discharge of official duty which renders you liable to be dealt with departmentally under the provision of Delhi Police (punishment & appeal) Rules 1980."

4. A departmental enquiry was held in respect of the aforesaid charge, wherein the charge was held to have been proved. The Disciplinary Authority, thereafter gave the petitioner an opportunity to represent against the enquiry report. After considering the reply given by the petitioner, the Disciplinary Authority passed an order of penalty on 11.10.1996 removing the petitioner from service with immediate effect. The period of absence was to be treated as leave without pay. It appears that the petitioner did not submit his

defence statement before the enquiry officer despite repeated directions for a period of about two months. The petitioner belatedly tried to submit his defence statement which was eventually filed along with the departmental appeal before the Additional Commissioner of Police. The departmental appeal and a further revision met with the same fate vide orders dated 6.9.1997 and 8.3.1999. The petitioner then filed the aforesaid OA to challenge the orders passed by the Disciplinary Authority, the Appellate Authority and the Revisional Authority. The Tribunal dismissed the original application by its impugned order dated 6.8.2001 which is now challenged before us.

5. The first submission made by learned counsel for the petitioner is that in the summary of allegations there were no details of past absence because of which he was branded as a *habitual absentee* who had absented himself on 20 different occasions in the past. It is argued that without these details it was not possible for the petitioner to have effectively met the charge of habitual absentism.

6. The Tribunal has observed that even though it was open to the petitioner to have denied, during the course of the departmental enquiry, any of the past acts of absentism on previous 20 occasions, the petitioner in fact had not denied the said charge at all. Independent of the reason given by the Tribunal we find from the

enquiry report that during the course of enquiry, PW-4 had produced the absentee record of the petitioner which was marked Exhibit PW-4/A. The petitioner was also given an opportunity to cross examine PW-4 which he did not avail of. Even in the representation made by the petitioner against the findings of the enquiry officer, he did not make any grievance about the fact that the details of the past twenty acts of absentism were not given to him in the charge sheet and that they were for the first time produced in the enquiry proceedings or that he was not able to meet the said charge effectively.

7. The real question to be examined is whether the petitioner was, in any way, prejudiced due to the non-supply of the details of past acts of absentism in the charge sheet itself when the same were produced during the course of the enquiry. In our view it cannot be said that the petitioner suffered any prejudice or that there was a breach of the principles of natural justice and that he did not have sufficient opportunity to meet the said charge. He was given an opportunity to cross examine the witness, namely, PW-4 who produced the record of past absentism pertaining to the petitioner but he did not choose to cross examine the said witness. Even the witnesses produced by him in his defence did not touch upon the said aspect and it is seen from the record that his entire focus was on trying to justify his latest act of absentism which had served as the

last straw before proceeding against him departmentally. We therefore reject this argument of the petitioner.

8. It was next contended that the orders passed by the Disciplinary Authority and the Appellate Authority were both a result of non-application of mind, inasmuch as, while the order of the Disciplinary Authority proceeds on the basis that the petitioner had absented on 43 different occasions earlier, the Appellate Authority proceeded to uphold the order of his removal on the basis that the petitioner had absented on 31 different occasions. The petitioner argued that the allegation against him as contained in the charge sheet was only in respect of 20 previous acts of absentism. It is submitted that the assumption of the Disciplinary and the Appellate Authorities of a much larger number of absentisms has led to his removal from service, which, but for such wrong assumptions may not have resulted in his removal from service. The Tribunal has rejected this argument and rightly so, by observing that the Revisonal Authority had correctly noted the number of past absentisms as twenty. It is well settled that absentism is considered as a serious misconduct particularly in relation to a police force wherein discipline is accorded very high priority. The reliance placed by the petitioner on ***Delhi Administration V. Yasin Khan***, 2000(86) DLT 144 is of no avail to the petitioner, since in the facts of that case, the charge

against the delinquent did not include the charge of his past acts of absentism, and no such record was produced even in the course of the enquiry proceedings. It was in those circumstances that the Court held that the past acts of asbentism could, therefore, not be relied upon to punish the delinquent. The facts in the present case are materially different as noticed above.

9. The petitioner then relied upon a certificate issued by the RML hospital to show that he was suffering from back pain which was stated to be the reason for his absence of over thirteen days between 13.6.1994 and 24.6.1994. He also argued that the concerned authorities had failed to deal with the defence of the petitioner.

10. Learned counsel for the respondent submits that the enquiry officer has considered the statements made by the defence witnesses. He submits that DW-1, Shri Anil Kumar, who had deposed that he informed about the petitioner's illness at P.S. Narela to the Duty Officer, upon cross examination stated that he did not know the name of the Duty Officer and that he and the petitioner had been residing together for the last two to three years.

11. A perusal of the enquiry report shows that the enquiry officer has taken note of the statements made by the defence witnesses. The Tribunal in its impugned order while dealing with the

said submission observed as follows:-

> "13. It has next been contended that the statements of the Dws were not discussed by the E.O Applicant had furnished two Dws. A perusal of the testimony reveals that neither of them have repelled the charge against applicant of abstaining from duty on ground of illness, without the permission of the competent authority. Hence this argument does not assist the applicant."

12. While it may be true that the petitioner was suffering from back pain during the period that he remained absent on the last occasion, that was no excuse for him to have absented without permission.

13. In view of the aforesaid, we find no merit in this petition. The order passed by the Tribunal does not call for interference by us in exercise of our powers of judicial review under Article 226 of the Constitution of India. Dismissed.

VIPIN SANGHI
JUDGE

A.K.SIKRI
JUDGE

November 30, 2007
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